

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KENNETH ALTIZIO,

Docket No.: 07 CV 6663 (CLB)(GAY)

Plaintiff,

-against-

AFFIDAVIT IN REPLY

MARRIOTT INTERNATIONAL, INC.,

Defendant.

-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

WILLIAM G. SCHER, an attorney duly admitted to practice law before the Courts of the State of New York, and of the United States District Courts of New York, having been duly sworn, deposes and says:

1. I am a member of the law firm of GARBARINI & SCHER, P.C., attorneys for defendant, MARRIOTT INTERNATIONAL, INC. (hereinafter "MARRIOTT"), in this action, and submit this Affidavit in support of MARRIOTT's Motion pursuant to 28 U.S.C. §1404(a) and the underpinnings of the doctrine of *forum non conveniens*, transferring the venue of this action from this Court to the United States District Court for the District of New Hampshire, and in reply to plaintiff's curious "Affirmation in Opposition" filed with the Court.

2. Review of plaintiff's one-page "Affirmation" reveals that counsel appears to oppose defendant's motion to transfer venue to the District of New Hampshire, but at the same time appears to also seek to remand this matter back to the Supreme Court of New York, County of New York, for reasons which are beyond your Affiant.

3. Counsel's citation of *Beatie v. Patriotic Scientific Corp.*, 431 F Supp 2d 367 (SDNY, 2006) is curious given the fact that in *Beatie*, Judge Leisure *denied* a motion to remand filed by plaintiffs. *Beatie* also dealt with forum selection clause which controlled the venue in which disputes were to be litigated; clearly distinguishable from the case at bar.

4. In the matter of *Codapro v. Wilson*, 997 F. Supp. 322 (EDNY, 1998), which is the only other matter cited by plaintiff's counsel, Judge Spatt granted a motion to remand a removed case based upon a lack of consent as and between the defendants. In this case, there is but one (1) defendant which timely removed this action based upon a) full diversity of citizenship as and between the parties and b) a claim sought in excess of \$75,000.00.

5. Counsel does not dispute these bases for removal, and fails to explain his failure to have moved for such relief in a timely manner pursuant to 28 USC 1447(c) which mandates that motions to remand be filed within thirty (30) days of filing of a removal petition [in this case on July 24, 2007].

6. There being no basis for remand, and no opposition rendered with respect to defendant's motion to transfer venue, it is respectfully requested that defendant's motion be granted in its entirety.

WHEREFORE, defendant MARRIOTT respectfully requests that this Court transfer this action to the United States District Court for the District of New Hampshire.

/s/
WILLIAM G. SCHER (WS 2891)

Sworn to before me this
18th day of September, 2007

/s/
Notary Public, State of New York

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Carol A. Stanton, being duly sworn, deposes and says, that the deponent is not a party of the action and is over 18 years of age.

That on the 18th day of September, 2007 the undersigned served the within

REPLY AFFIDAVIT

upon the attorneys named below by depositing a true copy of the same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York, and directed to the said attorneys at the address indicated below, such address being the address designated by said attorneys for that purpose.

EDWARD L. FORD, ESQ.
Attorney for Plaintiff
175 Main Street, Suite 416
White Plains, NY 10601
(914) 997-5162

/s/
Carol A. Stanton

Sworn to before me this
day of September, 2007

/s/
Lynne Williams
Notary Public, State of New York
City of New York No. 01WI4507978
Certificate filed in Richmond County
Commissions Expires June 30, 2011

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